Filed 8/25/04 Henry v. City of Santa Fe Springs CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

DONALD L. HENRY, Plaintiff and Appellant, v. CITY OF SANTA FE SPRINGS et al., Defendants and Respondents.	B168551 (Los Angeles County Super. Ct. No. VC039160)

APPEAL from an order of the Superior Court of Los Angeles County, Peter Espinosa, Judge. Affirmed.

Richard V. McMillan for Plaintiff and Appellant.

Steven N. Skolnik, City Attorney (City of Santa Fe Springs), for Defendants and Respondents.

In appellant Donald L. Henry's action against respondents City of Sante Fe Springs (City) and Community Development Commission of the City of Sante Fe Springs (Commission), respondents' demurrer to Henry's first amended complaint was sustained without leave to amend. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The underlying action is the latest in a series of proceedings involving Henry and respondents.[1] In 1996, a criminal complaint was filed against Henry regarding his property within the City. Henry entered into a plea agreement on December 2, 1997. Pursuant to this plea agreement, he was ordered to eliminate all violations of law on the property subject to the criminal prosecution.

Henry subsequently pursued litigation against respondents in state and federal court. On April 27, 1999, he filed an action against respondents in Los Angeles Superior Court (BC209412) (first state action). His initial complaint in that action asserted claims for inverse condemnation, and violation of substantive due process rights and other rights under the Fifth Amendment of the United States Constitution. After the City removed the action to federal court, a federal court dismissed his constitutional claims with prejudice and remanded his remaining claims to state court.

---

[1] The history of the proceedings recited below relies in part on facts that Henry acknowledged before the trial court, and on the unpublished appellate opinion in *Henry v. City of Sante Fe Springs* (Oct. 23, 2001, B140489). Regarding the latter, the trial court granted respondents' request for judicial notice of this opinion, and Henry has never challenged this ruling or respondents' reliance on facts cited in this opinion. We take judicial notice of the facts that Henry has conceded, as well as the facts about the prior litigation found in the appellate opinion. (Evid. Code, § 459, subd. (a); see *Scafidi v. Western Loan & Bldg. Co.* (1946) 72 Cal.App.2d 550, 560-562; *Abbott v. Western Nat. Indem. Co.* (1958) 165 Cal.App.2d 302, 303-305.)

Henry's amended complaint in the first state action asserted claims for inverse condemnation, interference with economic advantage, and selective enforcement of zoning ordinances. It alleged the following facts: In 1968, Henry purchased property zoned for heavy industry within the City. In 1973, the City enacted a redevelopment ordinance for an area encompassing Henry's property and authorized the Commission's activities. After 1982, the City decided to obtain Henry's property for a golf course without paying for it. It undertook an effort to compel Henry to sell his property for less than its fair market value. To this end, it initiated a criminal prosecution against him for zoning violations in 1988, cut off his electrical power in 1993, declined to issue a conditional use permit that would have restored this power in 1995, and undertook the aforementioned criminal prosecution in 1996.

On February 29, 2000, the trial court sustained a demurrer to this complaint, and dismissed the first state action. On October 23, 2001, an appellate court affirmed this dismissal (*Henry v. City of Sante Fe Springs*, *supra*, B140489 [unpub. opn.]), concluding that Henry's claims were time-barred under the applicable statutes of limitation.

Henry initiated the underlying action on January 29, 2003. His original complaint sought damages for violations of his rights under article I, sections 1 and 7 of the California Constitution, and for inverse condemnation. It alleged the following facts: In 1963, Henry purchased his property within the City, and until 2001, he operated a Perlite processing plant and a gas fireplace log manufacturing company on it. In 1982 and 1983, the City negotiated to buy the property, but ultimately declined to pay Henry's relocation expenses.

The complaint further alleged that from 1993 through November 2001, respondents "directed their employees and agents in a common plan and scheme . . . designed to deprive [Henry] of his property, and his constitutionally protected

rights, by falsely alleging that [Henry] was violating certain City codes and by alleging that [Henry's] use of his property was unlawful." The purpose of this scheme was to depress the value of Henry's property so that respondents could obtain it for a golf course. In furtherance of this scheme, respondents "knowingly and wrongfully" instituted a criminal proceeding regarding Henry's property, and on November 26, 2001, they obtained a court order requiring him to remove all materials and equipment from it. By obtaining this order, respondents "completed their plan and scheme and . . . completely prevented all reasonable use of [Henry's] properties which resulted in . . . a de facto taking of [his] property."

On March 4, 2003, respondents demurred to this complaint and sought sanctions against Henry. (Code Civ. Proc., § 128.7.) On April 7, 2003, the trial court sustained the demurrer with leave to amend, reasoning that Henry could not assert claims for damages under article I, sections 1 and 7 of the California Constitution, and that the obtaining of a court order, by itself, was not an injury to property for the purposes of inverse condemnation. It also denied respondents' request for sanctions.

Henry filed his amended complaint on April 18, 2003. The following facts are alleged in this complaint: In furtherance of respondents' scheme to deprive Henry of his property, they "knowingly and wrongfully" instituted the criminal proceedings that resulted in the order previously described in connection with Henry's plea agreement, which required him to eliminate all violations of law on his properties. They then refused to accept applications for a business license, conditional use permits, and a variance that would have permitted him to sell his inventory and raw materials, continue his business and thereby remedy the violations, or sell his property. By November 26, 2001, respondents--by using the court order and by refusing Henry's applications--had compelled Henry to remove all his personal property and raw materials at his own expense. In so doing,

respondents "finally and completely prevented all reasonable use of [his] properties . . . which resulted in . . . a de facto taking of [his] property."

Respondents demurred to the amended complaint on May 2, 2003. The trial court sustained this demurrer without leave to amend, concluding Henry had not alleged an entitlement to damages for violations of his constitutional rights, and that his inverse condemnation claim failed for want of allegations that he had pursued mandamus to remedy the rejection of his applications. An order of dismissal was entered on July 7, 2003.[2]

DISCUSSION

Henry contends that the trial court improperly sustained the demurrer to his amended complaint without leave to amend. He argues that this complaint adequately states claims for inverse condemnation, denial of due process, and interference with prospective economic relations, and that he should be accorded leave to amend any deficiencies in it. As we explain below, he is mistaken.

A. *Standard of Review*

"Because a demurrer both tests the legal sufficiency of the complaint and involves the trial court's discretion, an appellate court employs two separate standards of review on appeal. [Citation.] . . . Appellate courts first review the complaint de novo to determine whether or not the . . . complaint alleges facts sufficient to state a cause of action under any legal theory, [citation], or in other words, to determine whether or not the trial court erroneously sustained the

---

[2] We observe that Henry filed his notice of appeal before the order of dismissal was filed. We deem this premature notice to be filed immediately after the order of dismissal. (*Darling, Hall & Rae v. Kritt* (1999) 75 Cal.App.4th 1148, 1154, fn. 5.)

demurrer as a matter of law. [Citation.]" (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 879, fn. omitted.) However, "[i]f another proper ground for sustaining the demurrer exists, this court will still affirm the demurrers even if the trial court relied on an improper ground, whether or not the defendants asserted the proper ground in the trial court. [Citation.]" (*Id*. at p. 880, fn. 10.)

"When [so] reviewing a demurrer on appeal, appellate courts generally assume that all facts pleaded in the complaint are true. [Citation.]" (*Cantu v. Resolution Trust Corp.*, *supra*, 4 Cal.App.4th at p. 877, fn. omitted.) Nonetheless, "[t]he complaint should be read as containing the judicially noticeable facts, 'even when the pleading contains an express allegation to the contrary.'" (*Ibid*., quoting *Chavez v. Times-Mirror Co.* (1921) 185 Cal. 20, 23.)

"Second, if a trial court sustains a demurrer without leave to amend, appellate courts determine whether or not the plaintiff could amend the complaint to state a cause of action. [Citation.]" (*Cantu v. Resolution Trust Corp., supra,* 4 Cal.App.4th at p. 879, fn. 9.)

B. *Res Judicata*

We begin our inquiry by examining the extent to which the doctrine of res judicata prohibits or limits Henry's claims in his first amended complaint.

Under this doctrine, final judgments bar the relitigation of claims arising out of a particular set of facts. (*Mata v. City of Los Angeles* (1993) 20 Cal.App.4th 141, 149.) That the prior judgment "resulted from the sustaining of a general demurrer does not preclude the application of the res judicata doctrine. [Citation.]" (*Pollock v. University of Southern California* (2003) 112 Cal.App.4th 1416, 1428.)

Generally, "a judgment on a general demurrer will have the effect of a bar in a new action in which the complaint states the same facts which were held not to constitute a cause of action on the former demurrer or, notwithstanding differences

in the facts alleged, when the ground on the former demurrer in the former action was sustained is equally applicable to the second one. [Citations.]" (*McKinney v. County of Santa Clara* (1980) 110 Cal.App.3d 787, 794.) However, "[i]f . . . new or additional facts are alleged that cure the defects in the original pleading, it is settled that the former judgment is not a bar to the subsequent action whether or not plaintiff had an opportunity to amend his complaint. [Citations.]" (*Keidatz v. Albany* (1952) 39 Cal.2d 826, 828-829.)

Under the principles of res judicata applicable here, the judgment in the first state action bars *any* claim in the present action that relies solely on the facts alleged in the first state action, regardless of whether the claim was asserted in the first state action. (*Ojavan Investors, Inc. v. California Coastal Com.* (1997) 54 Cal.App.4th 373, 384.) Here, Henry's amended complaints in the first state action and in the underlying action allege the same basic facts up to, and including, respondents' initiation of a criminal proceeding against him in 1996. However, his amended complaint in the underlying action also alleges new facts not found in the amended complaint in the first state action, including his plea agreement and subsequent events, and--as we elaborate below (see pts. C. and D., *post*)--it omits crucial facts predating the 1996 criminal proceeding that were alleged in the first state action.

In view of the aforementioned principles, our inquiry is whether the *new* allegations in his amended complaint support tenable claims. The pertinent allegations are: (1) the 1996 criminal proceeding, which respondents initiated "knowingly and wrongfully," led to the 1997 plea agreement and order directing Henry to eliminate violations of law on his property; (2) respondents thereafter refused to accept his applications for licenses, conditional use permits, and variances that would have permitted him to continue his business or sell his inventory, property, or business; (3) until 2001, respondents falsely alleged that

Henry was engaged in unlawful activities on his property; and (4) by November 26, 2001, respondents had used the aforementioned order and practices to compel him to remove his assets from the property.

On appeal, Henry states that *none* of his claims rest on the 1997 plea agreement and order described in item (1), and he denies that his amended complaint is intended as a collateral attack on the plea agreement and order. Instead, he argues that his claims involve respondents' conduct following the plea agreement and order.

For this reason, our inquiry focuses on the allegations in items (2) through (4). As we explain below, these allegations do not support tenable claims.

C. *Inverse Condemnation*

The first issue presented is whether the new allegations in Henry's amended complaint adequately allege a claim for inverse condemnation.

The authority for an inverse condemnation claim derives from article I, section 19, of the California Constitution (art. I, § 19). (*Marshall v. Department of Water & Power* (1990) 219 Cal.App.3d 1124, 1138.) This provision, which requires the payment of just compensation when "[p]rivate property [is] damaged or taken for public use," protects a broader range of property values than the analogous takings clause in the Fifth Amendment of the United States Constitution. (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 9, fn. 4.)

"To state a cause of action for inverse condemnation, a landowner must allege not only ownership of the property, but also the governmental entity's taking or damaging of property, and substantial damage to property rights that was substantially caused by the entity's conduct. [Citations.]" (*Del Oro Hills v. City of Oceanside* (1995) 31 Cal.App.4th 1060, 1075, fn. 10.) Takings generally fall into two categories: "Those where government activities result in a physical invasion

of property, and those where the government merely regulates the use of property." (*Moerman v. State of California* (1993) 17 Cal.App.4th 452, 457.) A "regulatory taking" is "one that results from the application of zoning laws or regulations which limit development of real property . . . ." (*Hensler v. City of Glendale*, *supra*, 8 Cal.4th at pp. 10-13.)

Here, we conclude that Henry alleges a regulatory taking, albeit of a novel sort. He does not contend that respondents physically invaded his property. Instead, he alleges that after the 1997 order, which required him to cure violations of City ordinances and other laws, respondents rejected his applications for variances, permits, and licenses that would have enabled him to correct the violations or continue his business. He further alleges that by November 26, 2001, this conduct "prevented all reasonable use of [his] properties . . . and resulted in a de facto taking of [his] property." Although he does not attack the validity of the ordinances and laws with which he was ordered to comply, the taking that he alleges was nonetheless effected by them, together with respondents' conduct following the 1997 order.

We further conclude that Henry's claim for inverse condemnation is time-barred. Generally, an inverse condemnation claim must be filed within three years if the plaintiff's property is damaged (Code Civ. Proc., § 338, subd. (j)), or within five years if it is taken (Code Civ. Proc., §§ 318, 319). (8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 1060, p. 631.) When there is no direct physical invasion of the landowner's property and the fact of the taking is not immediately apparent, the five-year limitation period is tolled "until 'the damage is sufficiently appreciable to a reasonable [person] . . . .' [Citation.]" (*Otay Water Dist. v. Beckwith* (1991) 1 Cal.App.4th 1041, 1049.)

In assessing the sufficiency of a complaint, we "may properly take judicial notice of a party's earlier pleadings and positions as well as established facts from

the same case *and other cases*." (*Cantu v. Resolution Trust Corp*., *supra*, 4 Cal.App.4th at p. 877.) This is because "the plaintiff may not plead facts that contradict the facts or positions that the plaintiff pleaded in earlier actions or suppress facts that prove the pleaded facts false." (*Ibid*., italics deleted.)

Here, the appellate court in the first state action determined that Henry alleged as a taking a *continuing* course of conduct by respondents that began *in 1982*, and that his claim for inverse condemnation accrued in February 1993, when respondents cut off electricity to his property. His amended complaint in the present action alleges new episodes in respondents' course of conduct, but wholly ignores the prior allegations indicating that the actionable taking occurred in 1993. Because Henry's new allegations do not cure the defects in his amended complaint in the first state action, his inverse condemnation claim is time-barred, notwithstanding these allegations. (*McKinney v. County of Santa Clara*, *supra*, 110 Cal.App.3d at p. 795.)

In an apparent effort to avoid the statute of limitations, Henry suggests that respondents' conduct in rejecting his applications denied his rights to due process regarding his property--that is, his rights to fair proceedings--and that *this* denial constituted a "taking." The crux of his contention is that due process rights of this kind themselves constitute "private property" under article I, section 19.[3] However, he cites no case authority that credibly supports this proposition.[4]

---

[3] Henry's opening brief on appeal also tersely states that denials of his rights to equal protection of the laws may also constitute a "taking." This contention is waived due to his failure to present argument with citation to appropriate legal authorities on this point. (*Horowitz v. Noble* (1978) 79 Cal.App.3d 120, 138-139; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 594, pp. 627-629.)

[4] On this matter, Henry cites *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194 and *Wilkerson v. City of Placentia* (1981) 118 Cal.App.3d 435. However, neither case

We are not persuaded. We recognize that the rights for which compensation must be paid under article I, section 19 are ultimately decided "on considerations of fairness and public policy," rather than "'technical concepts of property law.'" (*County of San Diego v. Miller* (1975) 13 Cal.3d 684, 691, quoting *United States v. Fuller* (1973) 409 U.S. 488, 490.) However, for reasons that we explain below (see pt. D., *post*), Henry has no *direct* claim for compensation under the due process provisions of the California Constitution (Cal. Const., art. I, § 7, subd. (a), § 15) for denials of his due process rights. In the absence of any such direct claim, we conclude that fairness and public policy bar the existence of an *indirect* "due process" claim through article I, section 19.[5]

---

discusses takings under article I, section 19 or the federal takings clause, and thus they do not support the proposition in question.

In *Skelly*, our Supreme Court held that public employees have a property interest in their employment protected under the due process clauses of the federal and state Constitutions, and thus they are entitled to procedural and substantive safeguards when they are subject to discipline. (15 Cal.3d at pp. 201-220.) Accordingly, nothing in *Skelly* suggests that a deprivation of due process rights itself constitutes a taking under article I, section 19.

In *Wilkerson*, the court held that under the due process clauses, a wrongfully terminated but *probationary* public employee had a protected "liberty" interest in the use of proper termination procedures, and thus he was entitled to backpay. (118 Cal.App.3d at pp. 441-445.) At one point, the court in *Wilkerson* states: "'Suspension of a right or of a temporary right of enjoyment may amount to a "taking" for "*due process purposes*." [Citations.]'" (*Id*. at p. 441, italics added.) The chain of citations for this proposition apparently terminates with *Sniadach v. Family Finance Corp.* (1969) 395 U.S. 337. In that case, the United States Supreme Court discussed the procedural due process guarantee in the Fourteenth Amendment of the federal Constitution, and tersely described a *deprivation* of property without due process of law as a "taking," without any reference to the federal takings clause. (*Id.* at pp. 338-341.) Because the term "taking," as used in *Wilkerson* and *Sniadach,* is a mere synonym for a "deprivation" under the state and federal due process clauses, they do not support the proposition that Henry advances.

5 In any event, Henry's indirect "due process" claim is also barred under the applicable five-year statute of limitations for inverse condemnation claims based on a

Henry's inverse condemnation claim fails for another reason, even if it is not time-barred. As the court explained in *County of San Luis Obispo v. Superior Court* (2001) 90 Cal.App.4th 288, 291-292, when a landowner alleges a regulatory taking, the landowner must secure a final administrative decision that affords the governmental entity "the opportunity to amend its decision or grant a variance to avoid should it be judicially determined that the particular application of the regulation constitutes a taking." (See also *Hensler v. City of Glendale, supra,* 8 Cal.4th at pp. 10-13.) This requirement applies to taking claims arising under the state and federal Constitutions. (See *id*. at p. 9, fn. 4.)

Under this requirement, a landowner must vigorously pursue a variance, notwithstanding the governmental entity's delays in processing a request for the variance. In *County of San Luis Obispo v. Superior Court*, *supra*, 90 Cal.App.4th at pages 290-291, a landowner applied for certificates of compliance to permit him to develop a parcel of land. When a planning department rejected his application, he appealed the decision to the county board of supervisors. (*Ibid*.) Over five months later, the board affirmed the decision, and the landowner filed an action against the county for inverse condemnation and administrative mandamus. (*Ibid*.) Four days after he filed this action, he lost his property in a foreclosure sale. (*Ibid*.)

---

regulatory taking. This claim alleges a "taking" of his due process rights that began no later than the 1997 plea agreement and order. As we have already explained, the appellate court in the first state action concluded that in 1993, Henry knew, or should have known, that respondents were taking his property. His indirect claim thus accrued with the 1997 plea agreement and order, given that a reasonable person would have recognized these events to be a "taking" of his due process rights when they occurred. Because they occurred more than five years before he filed the underlying action, the indirect claim is time-barred.

After the trial court granted summary adjudication on the landowner's mandamus, the county sought relief by petition for writ of mandate, contending that the landowner lacked standing to pursue his action because he had lost title to the property. (90 Cal.App.4th at p. 292.) The court in *County of San Luis Obispo* agreed. (*Ibid.*) In rejecting the landowner's contention that the county's deliberate delays in processing his applications had caused his loss of the property, the court stated: "Had [the landowner] believed the county was unreasonably delaying the processing of his applications, he had a remedy in ordinary mandate. (Code Civ. Proc., § 1085.) Although ordinary mandate may not compel the exercise of discretion in a particular manner, it may compel a public officer to act. [Citations.] [The landowner] *cannot wait until he loses the property to act*." (90 Cal.App.4th at p. 295, italics added.)

Here, Henry's amended complaint does not allege that he pursued any remedies--in ordinary mandate or otherwise--to compel a final administrative decision on his applications. For this reason, it does not assert a claim for inverse condemnation.

Henry contends in conclusory terms that respondents are estopped--apparently, on equitable grounds--from arguing that he was required to exhaust his remedies. However, his amended complaint does not allege facts supporting equitable estoppel, and on appeal he does not explain how respondents prevented him from exhausting his remedies. Because a complaint asserting equitable estoppel must allege all of its elements, Henry's contention does not cure the fatal defects in his claim for inverse condemnation.[6] (*Romero v. County of Santa Clara* (1970) 3 Cal.App.3d 700, 703.)

---

[6] The elements of equitable estoppel are: "'(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the

In sum, the demurrer was properly sustained with respect to Henry's claim for inverse condemnation.

B. *Denial of Due Process*

Henry contends that his amended complaint alleges a claim for the denial of his due process rights. This contention fails insofar as he seeks compensation under the due process provisions of the California Constitution, which guarantee due process with respect to "life, liberty, or property" in administrative and criminal proceedings. (Cal. Const., art. I, § 7, subd. (a), § 15.)[7]

In *Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300 (*Katzberg*), our Supreme Court concluded that the due process provision of article I, section 7, subdivision (a), of the California Constitution (art. I, § 7, subd. (a)) does not authorize actions to recover monetary damages for violations of due process "liberty" interests, absent a pertinent statute or established common law tort.[8] It determined that the test for the existence of a constitutional tort involves a two-step inquiry: first, courts should examine whether the intent of the pertinent constitutional provision is to authorize a damages action; and second, absent clear indicia of intent, courts should weigh several factors, including whether an

---

other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.'" (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489, quoting *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305.)

[7] Henry's briefs on appeal do not argue that he is entitled to compensation under federal law for violations of his due process rights, and thus any such contention is waived.

[8] In a companion case, *Degrassi v. Cook* (2002) 29 Cal.4th 333, 335, our Supreme Court also held that in the absence of a statute or established tort, individuals may not bring an action for damages for a violation of free speech rights protected under article I, section 2, subdivision (a) of the California Constitution.

adequate remedy already exists for the constitutional violation. (*Id*. at p. 317.) Applying this test, the *Katzberg* court held that there was no evidence that the intent of the provision is to provide a damages remedy regarding due process "liberty" interests, and that numerous factors weighed against recognizing a constitutional tort, including the availability of a remedy in mandamus. (*Id*. at pp. 317-329.)

In so concluding, the *Katzberg* court cited with approval *Carlsbad Aquafarm, Inc. v. State Dept. of Health Services* (2000) 83 Cal.App.4th 809 (*Carslbad Aquafarm*). (*Katzberg*, *supra*, 29 Cal.4th at pp. 316-329.) In that case, a shellfish harvester asserted a claim for damages against the California Department of Health Services (DHS) under article I, section 7, subdivision (a), alleging that DHS had improperly denied it a hearing on its request to be recertified as an approved shellfish seller. (*Carlsbad Aquafarm*, *supra*, 83 Cal.App.4th at pp. 811-815.) The court in *Carlsbad Aquafarm* declined to recognize an action for monetary damages under article I, section 7, subdivision (a), to remedy this due process violation, citing, among other factors, the existence of an adequate remedy in mandamus. (*Id.* at pp. 817-823.)

Here, Henry seeks monetary damages for alleged violations of his due process rights in connection with the rejection of his applications. However, as in *Katzberg* and *Carlsbad Aquafarm*, Henry had other remedies that he never pursued, and he otherwise closely resembles the shellfish harvester in *Carlsbad Aquafarm*. Accordingly, his amended complaint does not allege a basis for monetary damages.

Henry disagrees, contending that his claim involves a due process "property" interest, that is, due process with respect to his property, and thus it falls outside *Katzberg* and *Carlsbad Aquafarm*. As support, he points to the *Katzberg* court's discussion of *Lubey v. City and County of San Francisco* (1979) 98 Cal.App.3d

340, 345-349, and *Wilkerson v. City of Placentia*, *supra*, 118 Cal.App.3d 435, 441-443, in which the courts held that wrongfully terminated probationary public employees may assert due process claims for reinstatement with backpay. The court in *Katzberg* distinguished these cases, noting, inter alia, that the public employees in question may have possessed a due process "property" interest in their employment. (29 Cal.4th at p. 313, fn. 13.)

In our view, the case before us falls outside the scope of *Lubey* and *Wilkerson*, and under *Katzberg* and *Carlsbad Aquafarm.* The public employees in *Lubey* and *Wilkerson* apparently lacked alternate remedies to recover the pay that they lost while they tried to rectify their wrongful termination. By contrast, as we have explained, Henry did not seek relief by mandamus or other means before he lost the property and business for which he seeks damages. As the court observed in *Katzberg*, *supra*, 29 Cal.4th at page 326, footnote 27, a party that prevails on an action in ordinary mandamus (Code Civ. Proc., § 1085) may be entitled to damages (Code Civ. Proc., § 1095). For this reason, *Lubey* and *Wilkerson* are factually dissimilar to the case before us.

We also conclude that Henry's due process claim fails to meet the claim presentation requirements of the Tort Claims Act (Gov. Code, § 810 et seq.), even if it is otherwise tenable. "The Tort Claims Act provides that '[a] public entity may . . . be sued,' but that with specified exceptions 'no suit for money or damages may be brought against a public entity . . . until a written claim therefore has been presented to the public entity and had been acted upon by the board, or has been deemed to have been rejected by the board . . . .' (Gov. Code, §§ 945, 945.4; cf. *id.* §§ 905, 905.2, 910 et seq.)" (*Briggs v. Lawrence* (1991) 230 Cal.App.3d 605, 612.)

Under the longest potentially applicable periods, claims must be presented no more than one year after they accrue, and a suit on them must be initiated no

more than two years after they accrue. (*Utility Audit Co., Inc. v. City of Los Angeles* (2003) 112 Cal.App.4th 950, 960; Gov. Code, §§ 911.2, 945.6, subd. (a)(2).) With the exception of claims for inverse condemnation (Gov. Code, § 905.1), claims against public entities are subject to these presentation requirements, *regardless* of the legal foundation of these claims. (*State of California ex rel. Dept. of Transportation v. Superior Court* (1984) 159 Cal.App.3d 331, 338.)

Generally, a claim accrues under the presentation requirements when "the plaintiff accrued injury as a result of the defendant's alleged wrongful act or omission." (*Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1078.) As we have indicated (see pt. C., *ante*), Henry's allegations in the first state action established that respondents denied all reasonable use of his land no later than February 1993, when respondents cut off electricity to his property. He also alleged in that action that when he applied for a conditional use permit to restore electrical power in May 1995, respondents rejected his application and told him that the *only* permits that they would issue would be for demolition. Nothing in the amended complaint at issue here explains or retracts these prior allegations.

Henry thus cannot avoid these allegations, which establish that his due process claim accrued no later than May 1995. (*Cantu v. Resolution Trust Corp., supra,* 4 Cal.App.4th at p. 877.) In the underlying case, Henry's amended complaint alleges that he filed a claim with the City on February 22, 2002, which it rejected on April 8, 2002, and the record also shows that he filed the underlying action on January 29, 2003. Because Henry's claim accrued more than six years before he submitted a claim and filed the underlying action, his due process claim is time-barred under the claim presentation requirements.

In sum, the demurrer was properly sustained with respect to Henry's due process claim.

E. *Interference With Prospective Economic Advantage*

Finally, Henry contends that his amended complaint asserts a claim for interference with prospective economic advantage, given it alleges that respondents' employees made false statements about his property and rejected his applications, thereby destroying his business, its existing relationships, and his ability to sell it.[9] We disagree.

Under Government Code section 818.8, "[a] public entity is not liable for an injury caused by misrepresentation by an employee of the public entity, whether or not such misrepresentation be negligent or intentional." Furthermore, under Government Code section 818.4, "[p]ublic entities . . . are immune from liability for injury caused by the refusal to issue a license or permit when the entity is authorized by law to determine whether or not the license should be issued."[10]

---

9 The elements of this tort are: "'"(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit for plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant." [Citations.]' [Citation.]" (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153.) In addition, the plaintiff must "plead and prove . . . that the defendant's conduct was 'wrongful by some legal measure other than the fact of interference itself.'" (*Ibid*., quoting *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 393.)

10 Government Code section 818.4 provides: "A public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee of the public entity is

(*Colome v. State Athletic Com.* (1996) 47 Cal.App.4th 1444, 1455.) However, the entity is not immune from liability under this provision "when it is under a statutory obligation to grant or withhold a permit or approval or when the decision is a nondiscretionary, ministerial act." (*Inland Empire Health Plan v. Superior Court* (2003) 108 Cal.App.4th 588, 593.)

In view of these immunities, Henry's allegations do not support an interference claim. Respondents are immune from liability arising from misrepresentations by their employees. (*Universal By-Products, Inc. v. City of Modesto* (1974) 43 Cal.App.3d 145, 153.) Furthermore, as the trial court observed in sustaining respondents' demurrer, denial of a zoning exception is "a refusal to grant a favor," and landowners are generally not entitled to variances or exceptions from existing land ordinances. (*Rubin v. Board of Directors* (1940) 16 Cal.2d 119, 126.) Henry's amended complaint alleges only that respondents "refused to accept" his applications; it does not allege that respondents were under a statutory duty to issue the licenses, permits, and variances that he sought, and he does not suggest on appeal that they were under any such duty.

Henry contends that his allegations state an interference claim, citing *H & M Associates v. City of El Centro* (1980) 109 Cal.App.3d 399. This case is factually distinguishable. In *H & M Associates*, a partnership asserted an interference claim against a city, alleging that the city had contrived to buy the partnership's property cheaply by improperly cutting off water supplies to the property without a hearing and then notifying others of the cutoff. (*Id.* at p. 404.) After the trial court sustained a demurrer to the claim without leave to amend, the court in *H & M Associates* reversed, concluding under the allegations that the city was not immune

---

authorized by enactment to determine whether or not such authorization would be issued, denied, suspended or revoked."

pursuant to Government Code sections 815.2 and 820.2, which confer immunity for "'basic policy decisions.'" (109 Cal.App.3d at pp. 406-407.) As we have indicated, Henry's allegations of interference fall under other immunities.

Henry also contends that respondents may be liable for their employees' misrepresentations. He points to Government Code section 822.2, which accords a public employee *conditional* immunity from liability for his own misrepresentation "unless he is guilty of actual fraud, corruption or actual malice." However, as the court explained in *Universal By-Products, Inc. v. City of Modesto*, *supra*, 43 Cal.App.3d at pages 153-154, section 822.2 does not qualify or limit a public entity's immunity under Government Code section 818.8.

In sum, the trial court properly sustained the demurrer with respect to Henry's claim for tortious interference.

F. *Leave to Amend*

On appeal, Henry proposes only to add allegations that respondents' employees acted with malice in making their misrepresentations about the conditions on his property. However, as we have explained (see pt. E., *ante*), these allegations would not undermine respondents' immunity under Government Code section 818.8.

Henry also contends in general terms that he should be granted leave to amend his complaint. However, he has had one opportunity in the underlying action to cure the deficiencies in his complaint, which in large measure tries to resurrect claims that he asserted unsuccessfully in the first state action. In view of these facts, leave to amend was properly denied.

DISPOSITION

The order of dismissal is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

CURRY, J.

We concur:

EPSTEIN, Acting P.J.

HASTINGS, J.